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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,746	12/06/2005	Michael Patrick Kinsella	KC-0136	7866
34610	7590	10/03/2008		
KED & ASSOCIATES, LLP P.O. Box 221200 Chantilly, VA 20153-1200			EXAMINER	
			ZAUR, ASHRAF A	
			ART UNIT	PAPER NUMBER
			2175	
MAIL DATE	DELIVERY MODE			
10/03/2008	PAPER			

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/526,746	<b>Applicant(s)</b> KINSELLA ET AL.
	<b>Examiner</b> ASHRAF ZAHR	<b>Art Unit</b> 2175

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 June 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 47-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 47-66 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. This is the second action for application number 10/526746. Claims 1-46 have been cancelled. New Claims 47-66 have been added and are pending in this application.

***Response to Arguments***

2. Applicant Argues, "Dinah, Swanson and Farmer all fail to disclose or suggest a method wherein a first avatar is rendered based on input attributes received from a user, wherein the input attributes are also used to select a record from a database, and wherein a second avatar is rendered using attributes from a retrieved record"

Dinan discloses that members are represented in each scene/room of the town by their own unique faces designed by users themselves (Dinan, ¶0047). Dinan also discloses a database 21, which provides persistent storage of user identification, specifications, and creations (Dinan, ¶0040). Therefore, the examiner respectfully disagrees with the applicant.

3. Applicant also argues, "the cited references also fail to disclose or suggest selecting one of the rendered second avatars".

Dinan discloses to perform specific actions on another person, the user double-clicks the person's face for a drop-down menu of choices (Dinan, ¶0046). A user can also chat with another user using graphical chat bubbles (Dinan, ¶0050). Therefore, the examiner respectfully disagrees with the applicant.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 57-66 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**Regarding Claims 57-66**, the instant claim language does not specify that the claimed invention includes hardware. As such, the language of the claim merely describes a computer program *per se*. This raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine, which would result in a practical application producing a concrete, useful and tangible result to form the basis of statutory subject matter under 35 USC 101.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 2175

7. Claims 47-51, 55-61, 65-66 are rejected under 35 U.S.C. 102(e) as being anticipated by Dinan et al., US 2002/0097267 (Hereinafter, Dinan).

**Regarding Claim 47**, Dinan discloses, "a method of selecting an avatar, comprising the steps of: maintaining a database of records, each record comprising attributes of an individual and an identifier of said individual". Specifically, Dinan discloses an online community where user can chat with other individuals (Dinan, ¶039). Dinan also discloses a database 21, which provides persistent storage of user identification, specifications, and creations (Dinan, ¶0040).

Dinan also discloses, "receiving a plurality of input attributes from a user for selecting records from the database". Specifically, members are represented in each scene/room of the town by their own unique faces designed by users themselves (Dinan, ¶0047).

Dinan also discloses, "rendering a first avatar based on the plurality of input attributes, wherein a graphical user interface builds up the image of the first avatar as the plurality of input attributes are received". Specifically, members are represented in each scene/room of the town by their own unique faces designed by users themselves (Dinan, ¶0047).

Dinan also discloses, "selecting and retrieving at least one record from the database based on the plurality of input attributes". Specifically, to find out the name of another person in the Square, the user holds his mouse over the person's face 32, and the username of this person appears (Dinan, ¶0046).

Dinan also discloses, "rendering at least one second avatar using attributes comprised in the at least one retrieved record; and selecting a rendered second avatar". Specifically, members are represented in each scene/room of the town by their own unique faces designed by users themselves (Dinan, ¶0047).

**Regarding Claim 48,** Dinan also discloses, "the method as claimed in Claim 47, further comprising the additional step of sending a message to the individual who corresponds to the identifier of the selected rendered second avatar". Specifically, to perform specific actions on another person, the user double-clicks the person's face for a drop-down menu of choices (Dinan, ¶0046). A user can also chat with another user using graphical chat bubbles (Dinan, ¶0050).

**Regarding Claim 49,** Dinan also discloses, "the method as claimed in Claim 47, wherein the plurality of input attributes comprise attributes relating to a location of an individual".

**Regarding Claim 50,** Dinan also discloses, "the method as claimed in Claim 47, wherein the plurality of input attributes include details of an individual's physical appearance". Specifically, members are represented in each scene/room of the town by their own unique faces designed by users themselves (Dinan, ¶0047). Specifically, Dinan discloses the user creates his own face using a tool that allows him to pick face parts out of his inventory and place it on his face as he sees (Dinan, ¶0047).

**Regarding Claim 51**, Dinan also discloses, "the method as claimed in Claim 50, wherein the details of an individual's physical appearance are selected from a list consisting of head shapes, eye colors, eyelid states, mouth types, hairstyles, hair colors, skin colors, breast size, belly size and clothing". Specifically, Dinan discloses the user creates his own face using a tool that allows him to pick face parts out of his inventory and place it on his face as he sees (Dinan, ¶0047).

**Regarding Claim 55**, Dinan also discloses, "the method of claim 47, wherein the step of selecting and retrieving at least one record from the database based on the plurality of input attributes comprises selecting and retrieving a plurality of records from the database" Specifically, Dinan discloses an online community where user can chat with other individuals (Dinan, ¶039). Dinan also discloses a database 21, which provides persistent storage of user identification, specifications, and creations (Dinan, ¶0040).

Dinan also discloses, "wherein the step of rendering at least one second avatar comprises rendering a plurality of second avatars, wherein each second avatar corresponds to a different one of the selected and retrieved records" Specifically, to perform specific actions on another person, the user double-clicks the person's face for a drop-down menu of choices (Dinan, ¶0046). A user can also chat with another user using graphical chat bubbles (Dinan, ¶0050).

Art Unit: 2175

Dinan also discloses, "and wherein the step of selecting a rendered second avatar comprises selecting one of the plurality of second avatars". Specifically, members are represented in each scene/room of the town by their own unique faces designed by users themselves (Dinan, ¶0047).

**Regarding Claim 56,** Dinan also discloses, "the method of claim 55, further comprising the step of sending a message to the individual who corresponds to the identifier of the selected second avatar". Specifically, to perform specific actions on another person, the user double-clicks the person's face for a drop-down menu of choices (Dinan, ¶0046). A user can also chat with another user using graphical chat bubbles (Dinan, ¶0050).

**Regarding Claims 57-61, 65-66,** these claims are substantially similar to claims 47-51, 55-56 and are therefore rejected based upon the same reasoning used to reject claims 47-51, 55-56.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 52, 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dinan et al., US 2002/0097267 (Hereinafter, Dinan) in view of Farmer et al., US 6,476,830 et al., (Hereinafter, Farmer)

**Regarding Claim 52,** Dinan does not specifically disclose, "the method as claimed in Claim 51, wherein the clothing is selected from a list consisting of top style, top color, bottom style, bottom color, shoe type and shoe color". Farmer remedies this with the disclosure of n avatar can change its skin color, the color of the clothes on its upper torso, and the color of the clothes on its lower torso using a spray paint can object (Farmer, col 19, ln 30-38). It would be obvious to one of ordinary skill in the art to add allow clothing to be selected for the avatar. The motivation to do so would be to allow the user to customize avatar to a greater degree.

**Regarding Claim 62,** this claim is substantially similar to claim 52 and is therefore rejected based upon the same reasoning used to reject claim 52.

10. Claims 53-54, 63-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dinan et al., US 2002/0097267 (Hereinafter, Dinan) in view of Swanson et al., US 2002/0106066 (Hereinafter, Swanson).

**Regarding Claim 53,** Dinan does not specifically disclose, "the method as claimed in Claim 47, wherein the plurality of input attributes include details of an

individual's behavior". Swanson remedies this with the disclosure of, at step 118, members may select one or more personal or demographic parameters, e.g., such as member profile data included in the member database, to limit members from whom they will accept call requests. These parameters may be based upon sex, age, race, sexual orientation, marital status, habits (e.g., smoker v. non-smoker), interests, hobbies, and the like. For example, as shown in FIG. 3, a member may select only to receive call requests from men who are non-smokers. In addition, members may select geographic acceptance regions, e.g., within a predetermined geographic proximity to where they live, specific cities, counties, states, countries, and the like. It would be obvious to one of ordinary skill in the art at the time of the invention to include the search feature described in Swanson in the online community of Dinan. The motivation to do so would be to allow a first member that has found a second member of interest to him/her, the first member may want to initiate contact with the second member in a manner that protects his/her privacy until the members become better acquainted with one another (Swanson, ¶0003).

**Regarding Claim 54,** Dinan does not specifically disclose, "the method as claimed in Claim 53, wherein the details of an individual's behavior are selected from a list consisting of smoking preference, drink preference, musical preference, and interests". Swanson remedies this with the disclosure of, at step 118, members may select one or more personal or demographic parameters, e.g., such as member profile data included in the member database, to limit members from whom they will accept call

Art Unit: 2175

requests. These parameters may be based upon sex, age, race, sexual orientation, marital status, habits (e.g., smoker v. non-smoker), interests, hobbies, and the like. For example, as shown in FIG. 3, a member may select only to receive call requests from men who are non-smokers. In addition, members may select geographic acceptance regions, e.g., within a predetermined geographic proximity to where they live, specific cities, counties, states, countries, and the like. It would be obvious to one of ordinary skill in the art at the time of the invention to include the search feature described in Swanson in the online community of Dinan. The motivation to do so would be to allow a first member that has found a second member of interest to him/her, the first member may want to initiate contact with the second member in a manner that protects his/her privacy until the members become better acquainted with one another (Swanson, ¶0003).

**Regarding Claims 63-64,** these claims are substantially similar to claims 53-54 and are therefore rejected based upon the same reasoning used to reject claims 53-54.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ASHRAF ZAHR whose telephone number is (571)270-1973. The examiner can normally be reached on M-F 9:30 am - 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Bashore can be reached on (571)272-4088. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AAZ 9/18/08

/WILLIAM L. BASHORE/  
Supervisory Patent Examiner, Art Unit 2175